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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 349

CARLOS M. DE CASTRO,

Petitioner,

vs.

BOARD OF COMMISSIONERS OF SAN JUAN.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR RESPONDENT.

F. FERNANDEZ CUYAR,
Counsel for Respondent.

H. GONZALEZ BLANES,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 349

CARLOS M. DE CASTRO,

Petitioner,

vs.

BOARD OF COMMISSIONERS OF SAN JUAN,

Respondent.

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIRST CIRCUIT, TO REVIEW JUDGMENT AFFIRMING JUDGMENT OF SUPREME COURT OF PUERTO RICO STAYING EXECUTION OF LATTER COURT'S PRIOR JUDGMENT DIRECTING REINSTATEMENT OF PETITIONER AS CITY MANAGER.

BRIEF FOR RESPONDENT.

Opinions Below.

The official report of the opinion of the United States Circuit Court of Appeals, First Circuit, to which the present writ is directed, is volume 136, Federal Reporter, second series, pages 419, 426.

The official report of the opinion of the Supreme Court of Puerto Rico which was affirmed by the Circuit Court

of Appeals will be found, in Spanish, in volume 59, *Decisiones de Puerto Rico*, pages 676, 686. The English text of this opinion will be found in the record herein, pages 36, 46.

The opinion of the District Court of San Juan, which was reversed by the Supreme Court of Puerto Rico in its first decision in this litigation, is not officially reported, but may be found in the Record filed in this Court in *Board of Commissioners* v. *De Castro*, No. 94, October Term, 1941, pages 38, 45.

The first decision of the Supreme Court of Puerto Rico in this controversy, rendered June 28, 1940, directing petitioner's reinstatement, will be found in volume 57 Puerto Rico Reports, pages 149 to 159, and also in the Record filed herein, pages 1 to 11. The opinion of the United States Circuit Court of Appeals, First Circuit, affirming the judgment last above mentioned, is officially reported in volume 116 Federal Reporter, second series, page 806. A petition for writ of certiorari filed by the Board of Commissioners in this Court for review of the judgment of the Circuit Court of Appeals was denied October 13, 1941, 314 U. S. 614.

Jurisdiction.

This Court has jurisdiction by virtue of Section 240 (a) of the Judicial Code of the United States, as amended by the Act of February 13, 1925 (43 Stat. 938; 28 U. S. C. 347).

Statement of the Case.

The facts of this case, as stated by Petitioner in his brief are substantially correct, except in one important particular which we shall note hereafter. In addition, the Statement does not recite certain facts which, in Respondent's opinion, should be considered and weighed.

Board Resolution No. 373, decreeing the removal of petitioner from office, contained findings of fact convict-

ing Petitioner of "dereliction, inexcusable negligence and immoral and improper conduct in the discharge of the duties of his office" [1]. Upon certiorari proceedings, instituted by Petitioner before the District Court of San Juan, said resolution was upheld, the court stating that the evidence was conflicting on these issues and that, under a long line of decisions of the Supreme Court of Puerto Rico, the courts should not disturb findings of fact made by the Board if there was substantial evidence supporting them (F. R. 44, 45).

Upon appeal, taken by Petitioner to the Supreme Court of Puerto Rico, the judgment of the District Court was reversed (R. 1-11), Board Resolution No. 373 was annulled,[2] and the reinstatement of Petitioner in his office of City Manager was ordered.

The Board appealed to the United States Circuit Court of Appeals, First Circuit. The appeal was dismissed, or, rather, summarily affirmed by the Circuit Court of Appeals, on motion of De Castro, before any briefs had been filed by either party. It is perhaps appropriate at this point to observe that Petitioner herein availed himself and took advantage of Rule 39 (b) of the Circuit Court of Appeals in order to ask for and obtain a summary disposition of the Board's appeal at that time. Petitioner's attitude in this Court, urging the invalidity of said Rule 39 (b) and assailing it as a misunderstanding of this Court's decisions, is, to say the least, striking.

In its first opinion,[3] as also in its further opinion to which the present writ is directed, the Circuit Court of

[1] F R 8.

[2] In this first decision, the Insular Supreme Court held that the City Manager might be removed for *grave* negligence, but felt bound also to hold that the evidence of such grave negligence ought to be somewhat similar to that required for a crime, felony, or a misdemeanor. (R 10).

[3] Per Curiam.

Appeals concluded that the Insular Supreme Court was not inescapably wrong in its construction of the local statutes involved. It also stated that, "without necessarily approving all the language in the opinion of the Supreme Court"[4], that court was not patently erroneous in its conclusion of law.

Rehearing of this judgment having been denied, the Board filed in this Court its petition for writ of certiorari. This Court denied the petition on October 13, 1941.[5] Thereby, all opportunities for review of the Insular Supreme Court's judgment reversing the Board's action were destroyed. The chief executive officer of the largest city in Puerto Rico who had been condemned by his fellow citizens as derelict, inexcusably negligent, and guilty of immoral and improper conduct, was ordered back into the office of City Manager of San Juan.

Fortunately, by that time the term of office of petitioner had already expired. General elections had been held in Puerto Rico on November, 1940, and a new City Administration had been elected. Therefore, immediately after receipt of the mandate by the Supreme Court of Puerto Rico, the Board of Commissioners filed in that Court its petition for stay of execution of the judgment in so far as said judgment ordered the reinstatement of Petitioner in the office of City Manager. A hearing was set by the Supreme Court of Puerto Rico on the matter presented,[6] both parties were fully heard, orally and in writing,[7] and finally the Court issued its order directing that execution of its prior judgment be stayed in so far as the reinstatement in office was concerned, on the ground that Petitioner's term of office had expired on February, 1941. (R. 46).

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[4] Ibid.

[5] 314 U. S. 614, 86 L. Ed. 495.

[6] R 37.

[7] R 19, 25.

Contrary to Petitioner's assertion, to the effect that the Insular Supreme Court treated the issue thus presented "as a new one of mixed law and fact",[8] Respondent submits that the issue then presented to the Supreme Court of Puerto Rico was treated as a pure question of law exclusively, as a question of interpretation and construction of a statute, and, therefore, not subject, in its consideration and decision, to the introduction of evidence.

Petitioner filed a motion for reconsideration which was denied by the Supreme Court of Puerto Rico (R. 47, 66), and then an appeal was taken by him to the Circuit Court of Appeals. After a hearing on the merits, the Circuit Court of Appeals rendered its opinion and judgment affirming that of the Supreme Court of Puerto Rico on the ground that, even though if free to take an independent view of the point at issue, the Circuit Court would be inclined to disagree with the construction placed on the Act by the Supreme Court of Puerto Rico, said Circuit Court was not prepared to say and hold that the judgment appealed from was inescapably wrong.[9] It also indicated that the case involves "a political matter of strictly local concern in San Juan, Puerto Rico" [10].

Petitioner sought reconsideration of this judgment, and, upon denial thereof, filed his petition for writ of certiorari (R. 94).

At pages 4 and 5 of its Brief, Petitioner makes a statement of facts which is wholly inaccurate and most prejudicial to Respondent. Petitioner states that the Board of Commissioners, in its Brief in the Puerto Rican Supreme Court, "not only did not advocate its present theory of a four-year term, but actually took an exactly contrary view,

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[8] Brief for Petitioner, page 5.

[9] *De Castro* v. *Board of Commissioners of San Juan*, 136 F. 2d. 419, at page 425 (7).

[10] Ibid.

expressly construing Section 21 of Act No. 99 precisely as it has been construed by the present Petitioner throughout this proceeding, to the effect that the office of City Manager is one for life pending good behavior, and not one for any fixed term (R. 50) * * *"[11]

The true fact is that such contention was made by De Castro himself in *his* brief in the Puerto Rican Supreme Court. The very reference to the record which Petitioner makes will readily show the real situation:—at page 50 of the Record appears "Contention Number 1" of De Castro's motion for reconsideration, filed in the Insular Supreme Court. In the last paragraph of said page 50, De Castro refers to "the brief filed *by appellant*" and quotes from said Brief certain portions wherein it was argued that the City Manager's term of office was for life and not for a fixed number of years. It is obvious that the brief referred to is the one which had been filed by the party who appealed from the District Court of San Juan to the Insular Supreme Court, "by appellant". Inasmuch as said district court had entered judgment for the Board and against De Castro, it is clear that "appellant's brief" was not the Board's brief.[11a]

The Board has never advocated the life-tenure theory, simply because such theory does not correspond to the statute, nor to the generally understood meaning thereof, nor to the intention of the Puerto Rican Legislature.

A further point need be noted in Petitioner's Statement Of The Case. It is argued that Respondent herein did not make any mention whatever of its present contention in the Circuit Court of Appeals or in this Court, in the occasion of filing the prior petition for certiorari (No. 94, Oc-

[11] Last four lines of Page 4 and first three lines of Page 5, Brief for Petitioner.

[11a] See also pertinent paragraph in the opinion of the court below, at page 81 of the Record herein.

tober Term, 1941). The reason is obvious. The first stage of this litigation involved only the validity of Board Resolution No. 373, adjudging Petitioner guilty of immoral and improper conduct, dereliction and inexcusable negligence in the discharge of his duties. The issue as to whether Petitioner's term of office was four years or whether his tenure was for life was wholly immaterial and irrelevant to the controversy then being settled. No error could have been assigned or predicated before either the Circuit Court of Appeals or this Court, on either theory. Petitioner's rights under the first judgment of the Puerto Rican Supreme Court were not affected at all by the prevalence of either contention. As Petitioner correctly states in another part of his Brief,[12] "the length of the term of office was not in dispute in the trial court" and, consequently, could not have been in dispute in the Insular Supreme Court on appeal.

ARGUMENT.

Summary.

I. The Circuit Court of Appeals obviously has not construed the rule established by this Court in its decision in *Sancho Bonet* v. *Texas Co.*, 308 U. S. 463, 471, so as to bar reversal of the Puerto Rican Supreme Court in any matter of local law where the judgment of that Court, although regarded as erroneous, can be supported on any theory whatever, no matter how strained and illogical. The Circuit Court of Appeals has correctly appraised the extent, scope and effect of said rule, refusing to reverse the Puerto Rican Supreme Court in matters of local law where the judgments of that Court are supported by reason or logic, or, although the Circuit Court may disagree in principle, where said judgments cannot be held inescapably wrong or patently erroneous. See Point I., *infra*, page 9.

[12] Brief for Petitioner, page 34.

II. The judgment of the Circuit Court of Appeals represents but another fair and just application of the "local law doctrine" of this Court and, therefore, should be affirmed by this Court, because the judgment of the Insular Supreme Court is really not only not patently erroneous, nor inescapably wrong, but actually is the only true interpretation of the intent of the Puerto Rican Legislature as reflected in a local statute.

A. Section 21 of Act 99, when taken in connection with the context of the whole statute, is not altogether clear and free from ambiguity. Nevertheless, if it were considered unambiguous, resort to extrinsic aids for its interpretation is not only permissible but altogether desirable and proper. See Point II. A, *infra*, page 16.

B. The Insular Supreme Court did not err in passing upon the question of the term of office of Petitioner, under Act 99, nor in failing to remand the case to the Court of first instance for the taking of evidence in relation to such statutory interpretation, because, the question being one of pure law, and the judgment of reinstatement having been entered by said Insular Supreme Court, upon receipt of the mandate from the Circuit Court of Appeals after the Board's appeal thereto had been summarily dismissed, the Puerto Rican Supreme Court reacquired jurisdiction in the premises and could, in furtherance of justice, stay, either temporarily or permanently, the execution of its judgment if valid reason therefor was shown to exist. See Point II. B, *infra*, page 28.

C. The Puerto Rican Supreme Court was not inescapably wrong in its reasoning and inferences with relation to each and all of the extrinsic matters considered. Its ultimate conclusion that Section 21 of Act 99, correctly interpreted in relation to the context of the whole statute and by the light of the extrinsic aids available, represents truly and

legitimately the real and actual intention of the lawmaker is correct. Any other conclusion in this respect would lead to absurd consequences and to unreasonable results, plainly at variance with the policy of the legislation as a whole. See Point II. C, *infra*, page 31.

D. The judgment of January 14, 1942 implies a permanent stay of execution. Whether it results in an amendment of the prior judgment is immaterial in the premises. Petitioner's term of office as City Manager having expired after the judgment of reinstatement was entered and during the pendency of appeal proceedings, it "would be contrary to the statute and to justice that, availing himself of the terms of the judgment, Petitioner should be reinstated in an office to which he has no right." (R. 39). The Puerto Rican Supreme Court had jurisdiction to so act. Indeed, the authority of courts to stay execution has been referred to as an inherent one. See Point II. D, *infra*, page 49.

Point I.

The incidental statement of the Circuit Court of Appeals to the effect that its appellate jurisdiction in this class of cases is pretty much of a dead letter, if erroneous, does not require reversal of the judgment of that Court. Reversible error must be predicated upon substantial departure from law or upon prejudicial action manifestly unwarranted on the record. The judgment of the Circuit Court of Appeals is correct. It is the necessary consequence of a fair and just application of the doctrine of this Court with reference to the judicial policy of deferring to the local procedure and tribunals of Puerto Rico.

Consistently since the year 1874 this Court has manifested its general unwillingness to overrule the local tribunals upon matters of purely local concern [13] In different

[13] A fair collection of the various cases will be found in Appendix F, pages 63-79, Brief for Petitioner.

words, with varying expressions, at times forcefully, on occasion emphatically, and lately in the form of a clear imperative, this Court has reiterated the doctrine. It is a rule of policy, looking towards orderly development of the Government of Puerto Rico as an integral part of our governmental system. A reversal of the judgment of the Supreme Court of Puerto Rico on a matter of local law is justifiable only in the face of "manifest error" [14], or when said judgment is shown to be "clearly wrong" [15] or upon "an unescapable conclusion that it is wrong" [16], or when this Court is constrained to depart from the principles by which it follows and sustains the local law as applied by the court below due to "a sense of clear error committed" [17], or when the interpretation of the local tribunal is "manifestly erroneous" [18].

The recent decisions on this point are forceful and emphatic, even poignant. The test applied in the first of the two Sancho Bonet cases [19] makes reversal justifiable only when the judgments of the Puerto Rican courts are "unsupported by logic or reason". The second Bonet case elucidated the doctrine definitely. This Court said:

> "We now repeat once more that admonition. And we add that mere lip service to that rule is not enough. To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed

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[14] *Fox* v. *Haarstick*, 156 U. S. 674, 678-679; *Santa Fe County* v. *New Mexico, ex rel.* Coler, 215 U. S. 296, 305, 307; *Treat* v. *Grand Canyon R. Co.*, 222 U. S. 448, 452.

[15] *Santa Fe Central Ry. Co.* v. *Friday*, 232 U. S. 694, 700.

[16] *Diaz* v. *González*, 261 U. S. 102, 105-106.

[17] *Villanueva* v. *Villanueva*, 239 U. S. 253, 298-299; *Matos* v. *Alonso Hermanos*, 309 U. S. 429, 432.

[18] *Waialua Co.* v. *Christian*, 305 U. S. 91, 109.

[19] *Sancho Bonet, Treasurer*, v. *Tabucoa Sugar Co.*, 306 U. S. 505, 506-511, and *Sancho Bonet, Treasurer*, v. *Texas Co.*, 308 U. S. 463, 470-472.

with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous."[20]

In due justice to the Circuit Court of Appeals, respondent asserts, contrary to petitioner's contention, that no misunderstanding of this Court's decisions in the above cases appears from the Record herein. In the instant case the Circuit Court simply heeded the "repeated admonitions" of this Court[21]. Rule 39 (b) of that Court is no more than a reiteration of the doctrine of said cases. The rule was adopted in the interest of litigants. Under it, as a matter of practice, the transcripts of records brought on appeal from the Supreme Court of Puerto Rico are not printed until the Circuit Court, upon examination of the statement on appeal and of the typewritten record, determines *prima facie* that the appeal is meritorious. Thereby, unnecessary expense and needless delay are avoided and litigation is considerably expedited.

The second *Bonet* case is an appropriate illustration of the benefits flowing from the rule of this Court as embodied in Rule 39 (b) of the Circuit Court of Appeals. Two tenable constructions of the statute involved in the latter *Bonet* case were found by this Court, one accepted by the Supreme Court of Puerto Rico, and the other expressed, upon reversal, by the Circuit Court of Appeals. Although the conclusion reached by the Circuit Court of Appeals was

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[20] *Sancho Bonet, Treasurer, v. Texas Co.*, ibid, pages 470-471.

[21] *Sancho Bonet, Treasurer, v. Texas Co., supra.*

held by this Court to be "wholly reasonable", its judgment was reversed on the ground that such fact did not warrant holding the conclusion of the Supreme Court of Puerto Rico to be inescapably wrong. Expressed differently, it is not sufficient that the Circuit Court of Appeals may disagree with the judgment of the Puerto Rican Supreme Court, nor that the Puerto Rican Supreme Court may have chosen the less reasonable interpretation, nor that the construction made by the Circuit Court of Appeals is the most reasonable one. Such test is not novel at all. It was actually insinuated in the *Grand Canyon* case[22] and in the *Waialua* case[23].

The first *Bonet* case[24] had already indicated or hinted at such test, couched in different language but in reality grounded on the same underlying theory, when this Court stated therein that judgments of the Puerto Rican courts should not be disturbed if "not unsupported by logic or reason".

Petitioner asserts that an examination of the decisions shows that this Court has never failed fully to examine every case coming to it within its statutory jurisdiction from any Territorial court[25]. Respondent submits that this Court has repeatedly refused to make such an examination. The present litigation is a good instance or example.[26] Another recent and striking illustration will be found in the case of *De La Torre* v. *National City Bank of New York*, 110 F. 2d 976, 983, wherein the Circuit Court of Appeals, after an extensive and elaborate opinion, construing a local Puerto Rican statute, concluded that "If we were

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[22] *Treat* v. *Grand Canyon Ry. Co., supra.*

[23] *Waialua* v. *Christian, supra.*

[24] *Sancho Bonet, Treasurer,* v. *Yabucoa Sugar Co., supra.*

[25] Brief for Petitioner, page 15 E.

[26] Petition for certiorari filed by the Board of Commissioners in this Court was denied, 314 U. S. 614.

to take a wholly independent view of the question at issue * * *"[27], it would have reversed the Supreme Court of Puerto Rico, but that, under the circumstances, "it would require a touch of arrogance * * *"[28] for the Circuit Court to say that the judgment there appealed from was inescapably wrong, and, therefore, entered judgment of affirmance, incidentally stating that

> "* * * though Congress has given us appellate jurisdiction over the Supreme Court of Puerto Rico in matters of local law where the value in controversy exceeds $5,000, the exercise of this jurisdiction is so restricted by the canon prescribed by the Supreme Court of the United States that appeals in such cases are likely to be futile and merely to cause needless delay and expense."[29]

The similarity between both the holdings and the language used by the Circuit Court of Appeals in the *De La Torre* case and in the instant case is striking. Yet this Court denied certiorari in the *De La Torre* case.[30]

The very fact, however, that this Court has not fully examined every case coming to it within its statutory jurisdiction from a Territorial court demonstrates only applications of the rule with reference to interpretations of local statutes by local tribunals. Of course, that rule does not compel, nor require, nor insinuate abdication by the Circuit Courts of Appeals of their statutory jurisdiction to review judgments of the Territorial courts, but certainly, and wisely, exacts subordination of the Circuit Courts' opinions, when construction of local Territorial statutes is involved, to the opinions of the Territorial courts, even in those instances where the Circuit Courts disagree with the Terri-

[27] 136 F. (2d) at p. 983.

[28] Ib. at page 983.

[29] Ib., page 988.

[30] 311 U. S. 666, 85 L. Ed. 428.

torial courts, indeed even in such cases where the Circuit Courts' interpretations might seem, on appeal, to be equally plausible with those of the Territorial courts, nay even though they might seem the most reasonable ones. Only when the Territorial court's opinion is necessarily, ineludibly, inescapably wrong is a reversal justified, both in law and in reason.

Therefore, irrespective of what the Circuit Court of Appeals may have thought or said as to the effectiveness or lack thereof of its appellate jurisdiction over judgments of the Puerto Rican Supreme Court on matters of local law, what is really at issue in this Court is the result arrived at by the Circuit Court. Hence, Respondent takes issue with Petitioner's assertion [31] to the effect that the court below, in its opinion in the present case, definitely determines and expresses its opinion that the Insular Supreme Court was wrong in its interpretation with reference to the tenure of office of the City Manager of San Juan. The Circuit Court merely states that, if it were free to take a wholly independent view of the point at issue, it "would be inclined to conclude" [32] differently from what the Puerto Rican Supreme Court held. Significantly enough, however, the Circuit Court further said:

> "We are not prepared to say that the judgment now under review is "inescapably wrong"." [33]

It thus held virtually that the judgment of the Insular Supreme Court is not wholly "unsupported by reason or logic"; [34] that, if it were free to take an independent view of the matter, it would be inclined to make a different construction of the statute; that it "merely disagreed with that

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[31] Brief for Petitioner, page 16, last paragraph.

[32] Opinion below, 136 F. 2d 419, at page 425 (6).

[33] Ib., page 425 (7).

[34] *Sancho Bonet, Treasurer,* v. *Yabucoa Sugar Co., supra.*

interpretation";[35] that, *on appeal,* it believed that the Puerto Rican tribunal chose the less reasonable of two possible interpretations; and that it felt that its own interpretation was the most reasonable one.

It will thus be appreciated that Petitioner's contention is based on a fragile factual premise, i. e., that the Circuit Court of Appeals definitely decided that clear, manifest, inescapable error had been committed by the Puerto Rican Supreme Court. This, it is obvious from the Record, the Circuit Court of Appeals did not determine or hold. Indeed, it stated, contrariwise, that it was not prepared to hold that the judgment of the Supreme Court of Puerto Rico was inescapably wrong.

It follows that instead of misunderstanding this Court's decisions, the Circuit Court of Appeals fully grasped their scope and effect and gave them due application, in obedience to their injunction.

Respondent shall not discuss Petitioner's contentions, marked J and K, at pages 18 and 19 of the Brief, for the obvious reason that the point therein made is immaterial to the decision in the instant case. In other words, whether or not the rule of this Court with reference to the weight properly attributable to the decisions of local courts on matters of local concern is applicable both to decisions of the Supreme Court of Puerto Rico and of the United States District Court for Puerto Rico, or only to the Puerto Rican Supreme Court, is an issue not here present, the determination of which would produce no practical effects herein.

Summarizing, respondent contends, under this first assignment of error, as follows:

1. The Circuit Court of Appeals did not affirmatively hold that the judgment of the Puerto Rican Supreme Court is manifestly erroneous. The Circuit Court merely stated

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[35] *Sancho Bonet, Treasurer,* v. *Texas Co., supra.*

that if it were free to take a wholly independent view of the point at issue it "would be inclined" to construe the local statute in a manner different from that arrived at by the Insular Supreme Court.

2. The Circuit Court of Appeals plainly and significantly stated that it could not decide, that it was not prepared to say, that the judgment of the Puerto Rican Supreme Court is inescapably wrong.

3. The judgment of the Insular Supreme Court is not wholly unsupported by reason or logic. It certainly is not patently absurd or inescapably erroneous. On the contrary, it is the only correct, just and fair determination, interpretation and application of the intention of the Puerto Rican Legislature in this respect. See Points II. A and II. C, *infra*, pages 16 and 31.

4. Therefore, the judgment of the Circuit Court of Appeals, affirming that of the Puerto Rican Supreme Court, is a precise and true application of the real doctrine of this Court with reference to the respect to be paid to the judgments of local tribunals on matters of local law.

> "The practical construction of local laws is, perhaps, the best evidence of the intention of the lawmakers. The courts of the United States adopt as a rule of decision the established construction of local laws. And it cannot be material, whether such construction has been established by long usage or a judicial decision."
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> *Carrol* v. *Safford*, 44 U. S. 441, 3 How. 441, 11 L. Ed. 671 (1845).

POINT II. A.

The Puerto Rican Supreme Court's resort to extrinsic aids for construction of Section 21 of Act No. 99, with relation to the term or tenure of office of the City Manager of San Juan, does not constitute error, in

view of the fact that said section, when construed with reference to the context of the whole statute or associated sections thereof, is not wholly clear or free from ambiguity. Nevertheless, even if it were considered unambiguous, such resort to extrinsic aids is not only permissible but altogether desirable, proper and commendable.

The object of all interpretation of statutes is to ascertain the intention of the lawmakers and to make it effective. The basic principle has repeatedly been announced that if the statute is plain, certain and free from ambiguity, interpretation is unnecessary. Like all rules, however, this is not an absolute canon of construction. Various factors may, and in numerous cases do, require and justify interpretation. Besides the doubt created by the doubtful meaning of words and phrases, there are indeed other instances where the terms used do not express the legislative intent perfectly, in which interpretation is needed, as,—to take one readily available instance—,where the language used exceeds or falls short of expressing the meaning intended.

At best, words are inexact tools.[36] Abstractly, a word or phrase might easily convey a meaning quite different from the one actually intended and evident when the word or phrase is considered with those with which it is associated. Abstractly, the thought expressed in a detached sentence or paragraph may have little or no resemblance to the idea actually intended.

"Each word, phrase, clause and sentence are the elements from which the legislative intent is formed. The various words, phrases, clauses, and sentences make up the framework which supports the legislative

[36] Cf. *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 481, 87 L. Ed. 407, 411, citing *U. S.* v. *American Trucking Associations*, 310 U. S. 534, 543, 544, 84 L. Ed. 1345, 1350, 1351, 60 S. Ct. 1059.

intent. They are mutually dependent. Co-operatively, they convey the utlimate idea."

Crawford The Construction of Statutes, 1940, page 260.

Since words are not always used accurately by the legislator, the thought conveyed by the statute in its entirety may reveal the inaccurate use. From a very early date,[37] this Court has consistently recognized this fact.

"It is true that the natural import of words may be affected by the context, and that where other parts of the statute demonstrate an intent different from that which the words of a particular section of themselves would import, such manifest intent may be admitted to give to the words employed a less obvious meaning."[38]

Oneale v. *Thornton*, 10 U. S. 53, 6 Cranch. 53; 3 L. Ed. 150.
(per Chief Justice Marshall).

Petitioner contends that the phrase "and shall hold office during good conduct", contained in Section 21 of the Act, is so clear and free from ambiguity that the Puerto Rican Supreme Court "was manifestly and inescapably wrong"[39] in resorting to extrinsic aids for its construction.

At the outset, we must bear in mind Justice Storey's early advertence:

"Every technical rule as to the construction or force of particular terms must yield to the clear expression of the paramount will of the legislature."

Wilkinson v. Leland, 27 U. S. 627, 2 Pet. 627, 7 L. Ed. 542 (1829).

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[37] 1810.

[38] "In expounding a statute", this Court later said, "the court must not be guided by a single sentence or member of a sentence, but must look to the provisions of the whole law and to its object and policy". *United States* v. *Boisdore Heirs*, 49 U. S. 113, 8 How.; 12 L. Ed. 1009. And see *Pollard* v. *Bailey*, 87 U. S. 520, 20 Wall. 520, 22 L. Ed. 376, and *Costanzo* v. *Tillinghast*, 287 U. S. 341, 77 L. Ed. 350.

[39] Brief for Petitioner, page 24.

A particular term (in the instant case "during good conduct") cannot prevail over the expression of the legislative intent, if apparent throughout the context of the statute, although such particular term may have a well-defined meaning. In the present case, as will hereafter be shown,[40] the various related provisions of the Act disclose a clear expression of legislative will contrary to Petitioner's construction of Section 21.

Petitioner's time-worn and dogmatic contention, advanced in an attempt to condemn consideration of aids to construction upon the ground that the statute is "too clear and free from ambiguity," has been long ago authoritatively discarded.

> "It is said that when the meaning of language is plain we are not to resort to evidence in order to raise doubts. That is rather an axiom of experience than a rule of law and does not preclude consideration of persuasive evidence if it exists." [41]
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> Boston Sand & G. Co. v. United States, 49 S. Ct. 52, 278 U. S. 41; 73 L. Ed. 170 (1928).
>
> (per Justice Holmes.)

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[40] See Point II. C, *infra*, page 31.

[41] Notice similar language in subsequent decisions:—"The respondent contends that the words of Sec. 402 are plain and unambiguous and that other aids to construction may not be utilized. It is sufficient answer to deny that such words when used in an appropriation bill are words of art or have a settled meaning. See United States v. Perry, 50 F. 743, 748 (C. C. A. 8th). The very legislative materials which respondent would exclude refute his assumption. It would be anomalous to close our minds to persuasive evidence of intention on the ground that reasonable men could not differ as to the meaning of the words." *United States* v. *Dickerson*, 60 S. Ct. 1034, 310 U. S. 554, 84 L. Ed. 1356. Even when the plain meaning of the words does not produce absurd results but merely an unreasonable one plainly at variance with the policy of the statute, this Court has followed that purpose, rather than the literal words. *United States* v. *American Trucking Associations, supra.* "When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no rule of law which forbids its use, however clear the words may appear on superficial examination." *United States* v. *American Trucking Associations, supra.* And see generally Pound, Enforcement of Law, 20 Green Bag, 401, 404, referring to the "literal school" of interpretation.

That the phrase here in question, "during good conduct," is not wholly clear and free from ambiguity is demonstrated by the very fact that it needs interpretation in order to make it equivalent in effect to the meaning sought for by Petitioner, e. g., "during life." In his Brief, Petitioner, referring to said phrase, says:

> "It obviously means simply what it says, that is, "during good conduct", or *in other words*, for life * * *"[42]

These are certainly *other* words. At any rate, the statutory phrase *per se* does not necessarily express the idea of life tenure. It needs to be interpreted and construed in order to arrive at such equivalent.

The interpretation which Petitioner so assumingly makes is structured on three points:

(a) an analogy with a constitutional precept.[43]

(b) a reference to judicial precedents.[44]

(c) an intrinsic aid, that is, a comparison with Sec. 9 of the Act, relative to the term of office prescribed for the Board of Commissioners.

Point (a) is in itself an extrinsic aid to construction.[45]

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[42] Brief for Petitioner, page 8, A. Italics supplied.

[43] Section 1, Article III., of the Federal Constitution.

[44] *Martin* v. *Hunter's Lessee*, 14 U. S. (1 Wheat.) 304, 308; *Ex Parte* Hennen, 38 U. S. (13 Pet.) 225, 258-259; and *Smith* v. *Bryan*, 110 Va. 199, 203, 40 S. E. 652, 653.

[45] The meaning of statutes is ascertained in various ways, in the following order or sequence: (1) the words of the statute (in the instante case, the words *per se* do not necessarily express life tenure, such as would, for instance, the words "and shall hold office during his life"; (2) an examination of the context and the subject matter and purpose of the enactment (intrinsic aids); and (3) consultation with the several extrinsic matters for assistance (extrinsic aids). Further help may, of course, be found in the use of the numerous rules of construction. See Crawford, op. cit. pages 273, 274, sec. 172. Reference to other statutes or constitutions is manifestly an extrinsic aid. Crawford op. cit. sec. 237 at page 448.

Resorting himself thus to extrinsic aids, Petitioner implicitly recognizes the necessity, desirability, and convenience of resort to extrinsic aids for interpretation of Section 21 of the Act. Thereby, Petitioner tacitly admits also the fact that the statute is not wholly clear and free from ambiguity. Independently of the effect of such admissions of ambiguity, the reference made by Petitioner to other laws or to the Constitution, for purposes of construction, is proper and pertinent "only when doubt still remains after that source (*the words of the statute*) has been exhausted".[46]

Point (b) implies another resort to extrinsic aids, that is, a reference to judicial precedents. Blind reliance upon precedents will not necessarily assure the discovery of the legislative intent.[47] And, of course, if Petitioner's contention is to meet success, under the rule of *Bonet* v. *Texas Co.* and prior decisions, reliance on precedents in this case would have to *necessarily* assure the discovery of the legislative intent.

In this connection, the apposite inquiry would be: Why attach to the phrase "during good conduct," as used by the Puerto Rican Legislature in Act No. 99, the same meaning as given to it by this Court in the Hennen or in the Martin cases? Why thus assume that the Puerto Rican lawmakers, in 1931,[48] were cognizant of such meaning and intended so to use the phrase, a hundred years later? And why make such assumption notwithstanding the very significant fact that the first appointed City Manager, Mister Benítez Castaño, who was instrumental in the drafting of the statute, contemporaneously with the approval thereof expressed his

[46] Crawford, op. cit. sec. 237, page 448.

[47] Freund, Interpretation of Statutes (1916), 65 Pa. L. Rev. 207.

[48] Act No. 99 was approved May 15, 1931. Laws Puerto Rico, 1931, page 656.

understanding that his term of office was limited in point of time and would end on the Tuesday following the first Monday of 1937,[49] that is, precisely on the same day when the first elective Board of Commissioners, as prescribed by the Act,[50] would enter into possession of their offices and would elect a new City Manager?

The construction of the constitutional phrase "during good behavior" (*conduct ?*), made in the Martin and Hennen cases, certainly cannot be held to be of obligatory force upon the 1931 Puerto Rican lawmakers to such an extent as to justify the assertion that *necessarily* their use of a similar phrase *per force* signifies an intention to create a life tenure for the City Manager of San Juan, notwithstanding contrary indications thereto in the context of the statute, and in the face of resulting absurd consequences and anti-democratic and embarrassing effects flowing from such construction. See Point II. C, *infra*, page 31.

It is a mistake to treat statutory constructions like other branches of the common law, as a body of doctrine to be gathered from particular precedents and judicial utterances.[51]

Precedents may show us the way other courts have solved the problem, and may even make it possible for us to avoid the error into which others may have fallen, but blind adherence to precedents will tie the courts to the past. Considering the interpretative process as a whole, and keeping in mind that the primary purpose of construction is to

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[49] See Brief for Petitioner, Appendix B, page 48, letter of Mr. Benítez Castaño to the Board of Commissioners of San Juan, dated September 11, 1936.

[50] Section 50.

[51] Freund, op. cit. Cf. Dissenting Opinion of Justice Brandeis in *Olmstead* v. *United States*, 277 U. S. 438, 48 S. Ct. 464, 72 L. Ed. 944, 66 A. L. R. 376.

ascertain the legislative intent and to make it effective, there can be no real objection to allowing the Puerto Rican Supreme Court sufficient discretion to select that construction which will, in its opinion, enriched with the background of its peculiar knowledge of local action and conditions, meet the equities of the controversy and interpret most faithfully the intention of the Puerto Rican Legislature.[52]

Point (c) involves a reference to intrinsic aids for construction of the statute. The quest for the meaning of Section 21 of the Act transcends beyond the words of the statute to search their significance in comparison with a related section thereof. The context is thus used for purposes of interpretation, a quite appropriate method,[53] but which presupposes the existence of ambiguity in the precept which is being construed.[54]

The foregoing analysis of the three points upon which Petitioner supports his own construction of the statute shows that resort to extrinsic aids is absolutely necessary. It hardly behooves Petitioner, therefore, to assign as reversible error the action of the Puerto Rican Supreme Court in resorting to such aids for the construction of the statute here involved. Incidentally, the fact may be noted that modern authority on the subject emphatically commends and urges the use of extrinsic aids irrespective of the presence or absence of ambiguity in the statute to be interpreted and applied.[55]

Assuming, therefore, *argumentandis causa*, that Section 21 is absolutely clear and unambiguous, still, before its

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[52] Crawford, op. cit. Sec. 176, page 286.

[53] Black, Interpretation of Laws (second edition), page 242.

[54] *Dyre* v. *Dyre*, 212 N. C. 620, 194 S. E. 278.

[55] Crawford, op. cit. 281, 282, 283, 284, sec. 175.

meaning is ascertained, it must be subjected to interpretation and construction.

> "Few words are so plain that the context or the occasion is without capacity to enlarge or narrow their extension."
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> *Surqce* v. *Danna*, 248 N. Y. 18, 161 N. E. 315.

> "All new laws, though penned with the greatest of technical skill and passed upon the fullest and most mature deliberation, are considered as more or less obscure and equivocal until their meaning be fixed and ascertained by a series of particular discussions and adjudications."
>
> Dwarris (Potter) Statutes, 49.

The legislative intent should not be defeated simply because the statute may seem clear and unambiguous upon its face, when the court can, by resorting to the recognized sources of assistance and by applying any of the existing rules of construction, actually ascertain the true legislative intent. This court, for instance, has given to the word "banks" an interpretation and application considerably narrower than the ones it usually has, notwithstanding the fact that the word is one of settled meaning.[56]

The phrase "during good conduct" has no definite, well-settled meaning. It certainly cannot be classified as a term of art or of science. And, as a matter of fact, it has not, in all cases, been construed as implying or being equivalent to life tenure.[57]

Finally, a further point must be cleared. Both the Cir-

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[56] *Lionberger* v. *Rouse*, 76 U. S. 468, 9 Wall. 468, 19 L. Ed. 721 (1870). And see *Larkin* v. *Paugh*, 48 S. Ct. 366, 72 L. Ed. 640 (1928) where this Court interpreted and applied the term "public lands" differently from its usual and generally known meaning, stating *inter alia*: "The question usually is one of intention, considering the nature and object of the particular statute."

[57] *Stewart* v. *Ellsworth*, 75 Atl. 59. Cf. *Robertson* v. *Coughlin, Mayor, et al.*, 82 N. E. 678.

cuit Court of Appeals and Petitioner argue that, since the Act, as originally approved, prescribed no four-year term for any majority of the Commissioners to be appointed to serve during the five years prior to the inauguration of those elected in 1936, there was no four-year term to which the term of the City Manager could have been related as to that of a majority of the members of the appointing authority.[58] In this connection, the Circuit Court of Appeals states[59] that there is no basis for saying that the first City Manager held a four-year term, for at that time (1931) the tenure of office of the Commissioners themselves was not four years.

Both the court below and Petitioner have overlooked the scheme of the statute in setting up what might be called a provisional, appointive government for San Juan, designed and intended to remain in power only until the 1936 general elections, and subsequent quadrennial elections, should afford the opportunity to all qualified electors of choosing new administrations. Consequently, Section 50 of the original Act[60] provided that the Commissioners appointed by the Governor in accordance with Section 9 of the original Act "shall hold office until the first Monday in January of 1937," and also that the Board of Commissioners should be elected by popular vote at the general elections to be held in 1936 and every four years thereafter. It is clear, therefore, that the first Board of Commissioners was appointed, by direction of law, to exist only until the general elections of 1936. Hence, its appointment of City Manager could not overlap such date (1936), for, as prescribed by Section 21 of the Act, the City Manager "shall be appointed by the Board of Commissioners created by this Act," and "the Board of Commissioners

[58] Brief for Petitioner, page 23.

[59] 136 F. 2d at page 422.

[60] Brief for Petitioner, Appendix A, page 46.

created by this Act" was to be elected by popular vote in 1936 and every four years thereafter.

The first City Manager, appointed by the first provisional Board of Commissioners, understood, as did everybody else, that his term of office would expire on the same day as the new Board of Commissioners to be elected by popular vote in 1936 would take possession of their offices.[61] The appointment of the first City Manager could not overlap the expiration of the term of the first Board of Commissioners simply because each Board newly elected every four years is entitled by law [62] to choose a new City Manager. It cannot fairly or logically be assumed or understood that the first City Manager, chosen by an appointive, transitory Board, would be entitled to hold his office after new Boards *elected* by the people took possession of their offices and began functioning. Endless complications and undue embarrassment in the governmental structure and machinery are easily foreseeable as a result of such assumed situation. It is not lightly to be assumed that the Legislature, although allowing certain political or economical ideas to prevail in the polls, through the election of the legislative and administrative entity of government, should contemplate and fail to avoid a quite certain conflict between a City Manager, holding his office for life, and successive Boards of Commissioners which might have different political and economic ideas. Section 21 provides that the Board shall appoint the City Manager. It does not forbid the appointment of one of the commissioners to the post of City Manager. Assuming the life tenure contention, the first appointive, transitory Board of Commissioners might conceivably have bound for a lifetime all successive *elective* Boards to govern with a City Manager possibly violently hostile to the economic

[61] See footnote 49, *supra*.

[62] Section 21 in connection with Section 50 of Act No. 99.

program, social ideas or political views of said successive Boards.

Sound construction of the statute, particularly bearing in mind the manifest policy of the legislation, quite clearly reveals that the lawmakers' intention was to install a provisional governmental machinery in San Juan whose term of office would expire when a new administration should be elected in 1936. Hence, the expression in Section 50 of the Act.

This Court has recently held that where the plain meaning of words used in a statute produces an unreasonable result, plainly at variance with the policy of the legislation as a whole, the court will follow the purpose of the statute rather than the literal words.[63]

In the instant case, the policy of the legislation as a whole manifestly cannot be held to be to take away from the citizens of San Juan, the largest municipality of the Island of Puerto Rico, the right to elect every four years, if indirectly, the City Manager as well as the rest of the City Officials. It should take a very clear legislative expression to justify such a deprivation of one of the most cherished rights of a democracy, as well as to justify such a radical departure from a practice legislatively established in Puerto Rico ever since the American Government acquired by treaty the Island.[64]

Petitioner states, as a corroborating fact for his life tenure construction, that the first City Manager, Mr. Benítez Castaño, served in office until early in 1937. This fact, as we have already seen, instead of lending support to such construction, rather runs counter thereto in view of Mr. Castaño's contemporaneous expression of his opinion that

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[63] *United States* v. *Rosenblum Truck Lines*, 62 S. Ct. 445, 315 U. S. 50, 86 L. Ed. 671 (1942).

[64] In all municipalities of the Island the Mayor, as well as municipal councils or assemblies, are elected by the qualified voters thereof.

his term of office would expire "*the* Tuesday following the first Monday of 1937 (in the case 4th. of January, 1937)".[65] It is well to bear in mind that such substantially contemporaneous expressions of opinion are highly relevant and material evidence of the probable general understanding of the times and of the opinions of men who probably were active in the drafting of the statute. *Helvering* v. *Griffiths*, 318 U. S. 371, 411, 87 L. Ed. 843, 868 (Headnote 5).

Respondent submits that no error was committed by the Puerto Rican Supreme Court in resorting to extrinsic aids for interpretation of Section 21 of the Act, and that in view of the context of the whole statute, of the general understanding of the times, of the opinions of the men who actually were active in the drafting of the statute, and of the steady and consistent interpretation placed on the statute by all persons concerned, as well as by the failure of the Insular Legislature at subsequent meetings to amend said statute, the tenure provided for the City Manager's office was four years.

POINT II. B.

The Puerto Rican Supreme Court did not commit error in undertaking to construe Section 21 of Act No. 99, such issue being peculiarly within its jurisdiction. Remand of the case to the trial court for such purpose would have been unnecessary, dilatory and futile, inasmuch as courts do not receive evidence for purposes of interpretation of statutes. In any event, Petitioner was fully heard by the Puerto Rican Supreme Court, both orally and in writing, and had the opportunity to, and did submit, evidence on the matter.

The statutory jurisdiction of the Supreme Court of

[65] Brief for Petitioner, Appendix B, page 48.

Puerto Rico is extensive. In its deliberations and decisions said Court is not confined to the errors as pointed out by the parties, "but in furtherance of justice, the Court may also take cognizance of all the facts and proceedings in the case as they appear in the record, and likewise consider the merits thereof, so as to promote justice and right *and to prevent injustice and delay*".[66]

For the purposes of this assignment of error, it must necessarily be assumed that the City Manager's term of office is that of four years.[67] That being the case, when upon denial of the Board's petition for certiorari in this Court the mandate was received at the Supreme Court of Puerto Rico, Petitioner's term of office as City Manager had already expired.[68] Irrespective, therefore, of whether he was lawfully discharged, Petitioner had then no right to be reinstated in an office to which he would not have been entitled in 1942 in any event, had charges not been preferred at all.

Under these circumstances and especially bearing in mind the important fact that the judgment of reinstatement in favor of Petitioner had been entered by the Puerto Rican Supreme Court and not by the trial court, the petition of the Board of Commissioners for stay of execution of the judgment in so far as it directed reinstatement was appropriately submitted to the Puerto Rican Supreme Court which took cognizance thereof and then entertained it "so as to promote justice and right and to prevent injustice and delay".

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[66] Section 1 of the Act of the Puerto Rican Legislature, approved March 12, 1903 (Laws of Puerto Rico, 1903, page 59). Italics supplied.

[67] Otherwise the error assigned would be one of substantive, rather than of adjective law, and would, Respondent assumes, have been included under the first error assigned.

[68] Petitioner was appointed by the Board in its inaugural meeting after the 1936 elections, that is, on January 4, 1937. (F. R. 1, 30).

The question thus presented was certainly in the record, in the sense that the date of the appointment of Petitioner appeared in said record. The rest was a matter strictly of law.

It should be here noticed that Petitioner himself did not allege before the Puerto Rican Supreme Court "any legal ground to uphold his contention that this Court (*the Insular Supreme Court*) lacks jurisdiction to pass upon and decide this controversy".[69] It should also be noted that Petitioner did not request the Puerto Rican Supreme Court to remand the case to the trial court for dilucidation of the matter presented. This assignment of error, consequently, presents a question not previously submitted to either the Circuit Court of Appeals or the Insular Supreme Court.

Petitioner was not deprived of a full hearing in this matter. The judgment of the court below was entered after a hearing[70] whereof Petitioner was duly notified and wherein he appeared and was afforded full opportunity to present his contentions. As a matter of fact, Petitioner submitted exhibits (R. 34, 35) and filed extensive written objections, after the oral argument was completed (R. 19, 34).

No interest, public or private, would have benefited by a remand to the District Court of San Juan for determination of the law issue presented. In the interpretation and construction of statutes, courts pass upon purely law questions, even though they take judicial notice of some circumstances outside of the act which go to show its meaning, and even though in doing so they frequently take a wide range of illustration and investigation from public records, public documents, general and local history, and other matters of such general and public notoriety as may be supposed to

[69] R. 38.

[70] R. 37.

have been in the minds of all the legislators when the act was passed.[71]

POINT II. C.

The Puerto Rican Supreme Court was not inescapably wrong in its reasoning and inferences with relation to each and all of the extrinsic matters considered. Its ultimate conclusion that Section 21 of Act 99, correctly interpreted in relation to the context of the whole statute and by the light of the extrinsic aids available, represents truly and legitimately the real and actual intention of the lawmaker is correct. Any other conclusion in this respect would lead to absurd consequences and to unreasonable results, plainly at variance with the policy of the legislation as a whole.

(1) The Shurtleff Case

Both the Circuit Court of Appeals and Petitioner have misunderstood the position of the Puerto Rican Supreme Court and its purpose in citing *Shurtleff* v. *United States*, 189 U. S. 311, 23 S. Ct. 535, 47 L. ed. 828. As to the court below, it is but appropriate that notice be taken of the fact that, in discussing the Shurtleff Case and its citation by the Insular Supreme Court, it started along the correct path. The Circuit Court said, in this connection:

> "Life tenure for public officers is the exception. Hence, should not be read into the statute by implication but only if the intention of the Legislature to that effect appears to be so evident as to permit of no doubt. *This is an accepted canon of construction, for which the court properly cites Shurtleff* v. *United States*, 1903, 189 U. S. 311, 23 S. Ct. 535, 47 L. ed. 828."[72].

[71] *Badeau* v. *United States*, 21 Ct. Cl. (U. S.) 48. See also Crawford, op. cit. page 408, sec. 225.

[72] 136 F. 2d 419 at page 423, (1). Italics supplied.

This is precisely the correct appreciation of the motives of the citation made by the Puerto Rican Supreme Court. But the court below and Petitioner go one step further and insist that the Shurtleff Case was cited by the Insular Supreme Court as authority "for holding that Section 21 of Act No. 99 is ambiguous, or for reading into that section an implied intent on the part of the Legislature to prescribe any term of years for the office of City Manager"[73].

A careful reading of the opinion of the Supreme Court of Puerto Rico (especially at pages 40 and 41 of the Record) will show that the Shurtleff Case was cited exclusively to support the proposition that life tenure is the exception and that the tenure of an office shall not be understood to be for life unless the intention of the legislature to that effect appears to be so evident as to permit of no doubt. Therefore, the comments of both Petitioner and the Circuit Court of Appeals are not quite fair to the Puerto Rican tribunal.

(2) Anomalies Resulting From a Life Tenure Construction.

The court below recognizes the anomalies pointed out by the Puerto Rican Supreme Court as necessarily resulting from an interpretation of the statute in the sense that the City Manager is appointed to hold his office for life. The absurd or unreasonable consequences of such construction are, among others, the following:

(a) The Treasurer, the Director of Public Works, the Director of Health and Charities, the School Director and the Secretary of the Capital are all appointed by the City Manager[74]. Since the Act does not provide for definite terms of office for these officials, the City Manager might

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[73] Brief for Petitioner, page 28.

[74] Section 26 of the Act.

conceivably appoint them either for an indefinite number of years, or during the life of the City Manager, or for a limited term of years to be fixed by the City Manager. Section 39 of the Act, however, provides that all employees shall be appointed for the term for which each officer is appointed. Therefore, the officials above enumerated might be appointed for a term of four years, while the employees appointed by the City Manager would hold their employments during the life of the City Manager. Certainly, it is not lightly to be assumed that the legislator intended to establish "such an absurd difference between the tenure of office of an employee and that of officers as important as those enumerated in Section 26"[75] of the Act.

With reference to this unreasonable situation flowing from a life tenure construction for the office of City Manager, the court below simply points out that such an anomaly is relevant only if it is assumed that there is doubt or ambiguity as to the meaning of Section 21. The court below, thus, applies in a most drastic and blind manner the "literal school" of interpretation, instead of the modern doctrine which looks more to the purpose and policy of the legislation, sacrificing if necessary the literal meaning of words[76]. Petitioner, challenging the correctness of the hypothesis, admits that the sections of the Act dealing with the appointment and tenures of the various municipal officers and employees other than the City Manager "are not entirely clear"[77]. And, passing the point, asserts that

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[75] R. 42.

[76] *Ozawa* v. *United States*, 43 S. Ct. 65, 260 U. S. 178, 67 L. Ed. 199 (1922); *United States* v. *Katz*, 46 S. Ct. 513, 271 U. S. 354, 70 L. Ed. 986 (1926); *Haggard Co.* v. *Helvering*, 60 S. Ct. 337, 308 U. S. 389, 84 L. Ed. 340 (1940); *United States* v. *American Trucking Associations*, *supra*; *United States* v. *Dickerson*, *supra*; *Helvering* v. *Hammel*, 61 S. Ct. 368, 311 U. S. 504, 85 L. Ed. 303, 131 A.L.R. 1481 (1941); *United States* v. *Rosenblum Truck Lines*, *supra*.

[77] Brief for Petitioner, page 29.

that question is not properly at issue in this case. It argues, however, that such discriminations in terms of office are justified as part of the "obvious original plan" [78] of the Puerto Rican Legislature to take the office of City Manager, including "perhaps" the municipal employees appointed by that officer, out of partisan politics, adding that there are close parallels for such legislative plan in the civil service laws and regulations of the United States and many of our states and municipalities.

No evidence at all of such "obvious original plan" is discernible from the face of the statute and none is pointed out in Petitioner's brief as illustration. Such plan never really existed. Its existence is merely conjecture and speculation on the part of Petitioner.

In point of fact, there is evidence that such plan cannot possibly have been in the mind of the lawmakers. Section 18 of the Act [79] prescribes that the Board of Commissioners shall create such positions as may be necessary for the Government of the Capital, and shall provide the corresponding salaries in the budget, and no salary shall be paid to any employee whose position is not previously created by ordinance or resolution of the Board of Commissioners, specifying the powers and duties of such employee and stating the need of the position for the public service. In consonance with the provisions of this section, neither the City Manager nor the other officers appointed by him really have any power or faculty with reference to the appointment of employees. It is the Board of Commissioners who decides and determines the necessity of hiring employees, the salary to be paid to them and the powers and duties of such employees. The Board of Commissioners is elected by popular

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[78] Brief for Petitioner, page 30.

[79] Appendix A herein, page 53.

vote.[80] It is obvious, therefore, that partisan politics may, and as a matter of fact do, intervene in this matter. Besides, in Puerto Rico there is a civil service law in full force and effect, approved prior to the year 1931,[81] very similar to most of the civil service laws and regulations of the United States and of the various states and municipalities. The existence of this law, totally rewritten precisely in the year 1931, also tends to refute the contention that there may have been some kind of plan to take the office of City Manager, including the employees appointed by him, very largely out of partisan politics.

3. Another absurd or unreasonable consequence flowing from a life tenure construction for the office of City Manager is that an uncalled for discrimination would result between the employees appointed by the officials of the Government of San Juan and the employees appointed by the City Manager. The former would hold their employments during the tenure of the appointing officer, as prescribed in Section 39 of the Act, while the latter would hold their employments during the life or incumbency of the City Manager. This obvious consequence certainly cannot be held to have been contemplated by the legislator.

4. Administrative and Contemporaneous Construction of the Statute.

The Puerto Rican Supreme Court gave due weight to the fact, judicially noticed, that the political parties of Puerto

[80] Section 50 of the Act.

[81] An Act to Regulate and Improve the Civil Service of Porto Rico, approved March 14, 1907, Laws of Puerto Rico 1907, pages 171-184; amended by An Act To Create the Puerto Rico Civil Service Commission and Outline Its Duties And Functions; To Regulate And Improve the Civil Service of Puerto Rico; To Repeal the Civil Service Act Approved March 14, 1907, As Amended, And For Other Purposes, Laws of Puerto Rico, 1931, page 534.

Rico have always construed this statute in the sense that the tenure of office of the City Manager is that of four years, and that the Boards of Commissioners elected every four years have always appointed a new City Manager on their first inaugural session, that is, on the second Monday of February of the year following each general election.[82] The Insular Supreme Court also judicially noticed the persons who had been candidates of the different political parties to the office of City Manager in the last two general elections.[83] Petitioner himself was a candidate for that office in the elections held in 1936,[84] thereby tacitly agreeing with the generally understood conception of the statute as prescribing a limited term of office for the City Manager. The Puerto Rican Court also judicially noticed that Mr. Fernando Géigel was a candidate to the office of City Manager in the general elections held in 1940, and that the party to which Mr. Géigel belonged won said elections and, consequently, Mr. Géigel was appointed City Manager after the 1940 elections.

The Circuit Court of Appeals sweeps away the weight of this contemporaneous construction of the statute by public officials and by the people in general simply by saying that such interpretation would be a relevant consideration if the Act itself is deemed to be doubtful or ambiguous in meaning.[85] The court below thus insisted on a drastic literal interpretation of one section of the statute, paying no regard whatsoever to the context and to the purpose and policy of the Act as a whole.

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[82] Section 50 of the Act as amended by Act No. 10, Laws Puerto Rico (1937), page 131.

[83] 1936 and 1940.

[84] R. 44.

[85] 136 F. 2d 419 at page 425 (5).

Petitioner, however, at the outset questions the Puerto Rican Supreme Court's authority or faculty to take judicial notice of public acts and facts of common knowledge bearing on a doubtful issue of statutory construction. Petitioner asserts that such a general rule is restricted in Puerto Rico by virtue of the provisions of Section 398 of the Puerto Rican Code of Civil Procedure, 1933 edition.[86]

The statute invoked by petitioner does not enjoin judicial notice of facts of common knowledge. The provision is manifestly directory and does not exclude the taking of judicial notice, upon a doubtful issue of statutory construction or upon any process of interpretation of laws, of public acts and facts generally known, of history of the times, etc. The statute simply has a compelling effect on courts when so requested by litigants, but not a prohibitive effect.

What everybody knows the courts are presumed to know, and of such matters may take judicial cognizance.[87] Judges are not necessarily ignorant in court of what everybody else, and they themselves out of court, are familiar with; and there is no reason why they should pretend to be more ignorant or unobserving than the rest of mankind.[88]

This Court has judicially noticed the election of delegates and the assembling of a political convention, as public matters.[89]. And the Puerto Rican Supreme Court has taken judicial notice of the following facts, none of which could properly be classified within any of the eight subdivisions

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[86] Section 398 is copied *verbatim* at pages 31-32 of the Brief for Petitioner.

[87] *Nev-Cal Electric Securities Co.* v. *Imperial Irrigation District*, C. C. A. Cal., 85 F. 2d 886, certiorari denied, 57 S. Ct. 493, 300 U. S. 662, 81 L. Ed. 871.

[88] Cf. *Affiliated Enterprises* v. *Waller* (Del.), 5 Atl. 2d 257, 261.

[89] *Mills* v. *Green*, 16 S. Ct. 132, 159 U. S. 651, 40 L. Ed. 293. And see *Wallace* v. *United States*, 42 S. Ct. 221, 257 U. S. 541, 66 L. Ed. 360.

of Article 398 of the Code of Civil Procedure of Puerto Rico:

(a) The difference between a letter sent by certified mail and a letter sent by special delivery. *Abril et al.* v. *Moreno*, 10 P. R. Rep. 484.

(b) The existence of regular mail service between two cities in Puerto Rico. *Carrera Hermanos* v. *New York & Porto Rico Steamship Co.*, 25 P. R. Rep. 781.

(c) The character as public highway of a road between two cities in Puerto Rico. *Principe* v. *American Railroad Co.*, 22 P. R. Rep. 282.

(d) The fact that a large part of the law in England and in many States of the Union is unwritten. *Barclay et al.* v. *McCormick*, 29 P. R. Rep. 836.

The construction of a statute is a matter for the courts and not for the jury. In construing the statute the court might, had it chosen to do so, have called to its aid the wisdom and experience of eminent counsel, but it was not bound to do so and its refusal is not erroneous.[90]

Petitioner complains that the Puerto Rican Supreme Court should also have taken judicial notice of the fact that the first City Manager, Mr. Benítez Castaño, resigned in September, 1936, during the electoral campaign of that year, "thus assuring a vacancy in the office early in the following year, and thus obviating any inference such as that drawn by the Court".[91] The fact has no importance

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[90] Gaylor's Appeal, 43 Conn. 82. Cf. State ex rel. *Coleman* v. *Kelley*, 71 Kansas 811, 81 P. 450, 70 L. R. A. 450; *Pacific Coast Steamship Co.* v. *United States*, 33 Ct. Cl. (U. S.) 36; *Brown* v. *Turner*, 174 Mass. 150, 54 N. E. 510; *Badeau* v. *United States*, *supra*; *Gardner* v. *The Collector* (U. S.), 6 Wall. 499, 511, 18 L. Ed. 890; *Pollock* v. *Farmers Loan & Trust Co.*, 157 U. S. 429, 15 S. Ct. 673, 39 L. Ed. 759. See generally Crawford, op. cit. page 408, #225, and De Sloovere, Judge & Jury in Statutory Interpretation (1933), 46 Harvard Law Review 1086, 1103.

[91] Brief for Petitioner, pages 32-33.

or effect on the present controversy. Mr. Benítez Castaño, who was instrumental in the drafting of this statute, entered into office in the year 1931, when the Act went into effect, with the same understanding that every citizen had in the community at that time and throughout the subsequent years, that is, that the first City Manager would hold his office until the Tuesday following the First Monday of 1937, which was the date fixed by law.[92] Mr. Benítez Castaño did express in writing this general understanding.[93] And petitioner himself participated in this general understanding, since he was the candidate for City Manager of one of the political parties active in the 1936 electoral campaign.

Therefore, the resignation of Mr. Benítez Castaño in September, 1936 did not "assure a vacancy in the office" for the first time since 1931. In view of the contemporaneous construction of the statute, as made by Mr. Castaño and by all the parties concerned, in 1931 and thereafter, no resignation was necessary to assure the vacancy.

Petitioner also complains that the ruling of the Circuit Court of Appeals to the effect that Petitioner might have protected himself against the inferences drawn by the Puerto Rican Court from the facts judicially noticed, by challenging any such facts and by citing other facts so noticeable, is unsound because it deprives Petitioner of his right to a full hearing, since the facts offsetting those inferences "may have been" such as are not subject to judicial notice under Puerto Rican law. And he further alleges that, having had no opportunity to prove such facts, the Record does not disclose them, but that he alleged the existence of proof of such facts in his motion for reconsideration in the Insular tribunal.

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[92] Section 50 of the Act as originally enacted.

[93] Brief for Petitioner, Appendix B, page 48; also footnote 49, *supra*.

Respondent answers that a hearing was set by the Puerto Rican Supreme Court on this matter, that therein Petitioner submitted in writing his opposition, and that he accompanied thereto exhibits as evidence, and did not indicate nor point out what other proof he had which he could not procure or submit at the time. Whatever evidence Petitioner desired to offer, he had a full opportunity to offer and submit.

5. Petitioner himself originally was in agreement with the four-year construction of the tenure of office of the City Manager of San Juan.

The Puerto Rican Supreme Court also judicially noticed that Petitioner was a candidate, during the general elections of 1940, for membership in the Puerto Rican House of Representatives. These elections took place five months after the original judgment of reinstatement in favor of petitioner was entered.[94] The local tribunal, therefore, stated incidentally that such attitude of Petitioner tended to show his conviction "that he would not be able to continue holding the office of the City Manager of the Capital once the term of four years which would elapse on the second Monday of February, 1941, had expired".[95]

Petitioner asserts that the inference thus drawn by the local court is a complete *non sequitur*, explaining that his status as City Manager had been in suspense and involved in litigation for more than a year and that, therefore, he would have been right in estimating that it would continue so for several years, it being just as reasonable to infer that he intended, if elected to the Legislature, to abandon his claim to the City Managership. Further, Petitioner

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[94] Said original judgment was entered June 28, 1940 (R. 11), while the 1940 general elections were held on November, 1940.

[95] R., 45.

says that there are other possible explanations of that candidacy, as, for instance, that he may have supposed that he could legally serve as a legislator while his status of City Manager continued in suspense. No doubt there are other *possible* explanations for Petitioner's candidacy, but certainly there is no other more *probable* explanation or inference than that made by the Puerto Rican Supreme Court. And, to be sure, on the face of it no imputation of clear error or patent absurdity could be formulated against the inference made by the local tribunal.

Petitioner asserts, with reference to the appointment of Mr. Fernando Géigel as City Manager after the elections of 1940, that he alleged before the Puerto Rican Supreme Court that Mr. Géigel merely continued in office as City Manager, *without reappointment*, until his resignation long after January, 1941. The true fact, however, is that Mr. Géigel, who had succeeded Petitioner and who in the 1940 elections had been the candidate of the winning political party, for reappointment to the office of City Manager, did not continue in office without reappointment. In the inaugural session of the new Board of Commissioners elected during said elections, the Board formally appointed Mr. Géigel as City Manager of San Juan.[96]

But Petitioner further argues that in any event the candidacy of Mr. Géigel in 1940 lends no more support to the inference drawn by the Puerto Rican Court than does that of Petitioner himself in 1936, "for it must by that time have been generally known throughout the City that the whole matter was involved in litigation"[97]. In all certainty, such argument does not truly mean that in 1936 "the whole matter was involved in litigation", because plainly the litigation in the instant case started on September 21, 1939,[98]

[96] Appendix B of this Brief, page 58.

[97] Brief for Petitioner, p. 35.

[98] F R 1.

when De Castro filed his petition before the District Court of San Juan for review of the Board's resolution directing his removal from office. And if the argument attempts at persuasion on the basis that in 1940 "the whole matter was involved in litigation", it manifestly fails in its purpose in view of the fact that by that year the litigation involved only the issue as to the correctness of the removal, but not at all as to the length of the term of office of the City Manager. Neither in 1936 nor in 1940 was there yet any litigation at all as to the length of the term of office of the City Manager. Not until October 27, 1941 [99] was any issue raised as to the tenure of the office of City Manager of San Juan.

The fact, also adduced by Petitioner,[100] that Mr. Benítez Castaño, first City Manager, remained in office over five years has already been explained.[101] Such fact not only does not afford support to Petitioner's contention, but altogether sustains the limited term theory.

Petitioner repeats, as part of his argument under this assignment of error, the inexact and incorrect assertion that Respondent itself "argued in the earlier stages of this litigation that the term of office of the City Manager was for life".[102] We have already shown [103] that this is not true and that the Board of Commissioners never expressed or manifested such theory. In the nature of things, this would have been most improbable since it has been the consistent and generally accepted construction of the statute locally that the office of City Manager was intended by the statute to be limited to the same term as that of the appointing authority, the Board of Commissioners.

Finally, Petitioner argues that the Legislature of Puerto

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[99] R., 12.

[100] Brief for Petitioner, p. 35.

[101] Pages 24, 25, 26, 27, and 28 of this Brief, *supra*.

[102] Brief for Petitioner, p. 35.

[103] Pages 5 and 6 of this Brief, *supra*.

Rico, "not only did not construe Act No. 99 as providing a four-year term for the City Manager, but actually declined to insert such a provision in the law",[104] as indicated by the fact that, as originally introduced, Section 21 of the Bill subsequently enacted with amendments as Act No. 99 actually provided for a four-year term, but was amended before enactment by striking out that provision and substituting the present text. And Petitioner further argues that, as late as 1936 and 1937, the Insular Legislature was still of the same mind, as is shown by the fact that bills were introduced during those years to provide expressly for election of the City Manager of San Juan at the quadrennial general elections, and that each of those bills failed of enactment.

Respondent answers, in the first place, that the Legislature of Puerto Rico has in effect construed Act No. 99 as providing a four-year term for the City Manager, in view of the fact that, although contemporaneous construction did establish such limited term, and although at every quadrennial election held from 1936 on new Boards have appointed new City Managers, and although in 1942 the Puerto Rican Supreme Court ratified such contemporaneous and practical construction of the statute, the Insular Legislature has left the statute unchanged, notwithstanding the fact that it has repeatedly met in session during that period of time.

> "Where a particular interpretation has been placed on a statute by the court and the legislature at its subsequent meeting has left the statute materially unchanged, it is presumed that the legislature has acquiesced in that interpretation."
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> 59 C. J. 1012.
>
> Cf. *Ashbrook* v. *Bailey*, 116 Va. 10, 81 S. E. 64, and *State* v. *Morgan*, 131 Wash. 145, 229 P. 309.

[104] Brief for Petitioner, p. 35.

"The failure of Congress to alter or amend the section, notwithstanding this consistent construction by the department charged with its enforcement, creates a presumption in favor of the administrative interpretation, to which we should give great weight even if we doubted the correctness of the ruling of the Department of Labor."

Costanzo v. *Tillinghast*, 53 S. Ct. 152, 287 U. S. 341, 77 L. Ed. 350.

The fact that Section 21 of the statute, as originally drafted, aimed to create the office of City Manager as an elective office with a term to coincide with the quadrennial general elections usually held in Puerto Rico, gives no support to Petitioner's life tenure construction. Said Section 21, as originally written in Senate Bill No. 1, was there inserted to correspond harmoniously with the provisions of Section 50, as originally drafted and approved. The very fact that Section 21 was amended before approval, when taken in connection with the further fact that Section 50 was not amended at all before approval, sufficiently shows that the limited term idea was not abandoned by the legislators. Naturally, when amending Section 21, the lawmaker could not then fix *expressly* a four-year term for the City Manager because it would not coincide with the term as fixed in Section 50 for the first Board of Commissioners and an interregnum would occur, for, at the expiration of four years after 1931, more than a year would have to pass before a new City Manager could be chosen in the 1936 general elections. Hence, Section 50 remained unamended, but providing that "the Board of Commissioners created by this Act" should be elected by popular vote at the general elections to be held in 1936 and every four years thereafter, while the new Section 21 provided that "the Board of Commissioners created by this Act" should appoint the City Manager.

The change effected through the amendment to the original draft of Section 21 was manifestly grounded solely on the idea that the office of City Manager be created as an appointive, rather than an elective post. That this idea was prevalent is further shown, *a contrario sensu*, by the two bills presented during the legislative sessions of 1936 and 1937, whereby the office of City Manager is sought to be changed from an appointive to an elective post. These two bills tended simply to change the manner of filling the office, not its tenure, which was already generally understood to be limited to four years. The two bills, even with respect to the proposed change in the manner of filling the office, were nothing but a confirmation and ratification of the generally understood and accepted meaning of the statute, since in reality the Commissioners had always been elected on their pledge as to the person for whom they would vote, if successful in the elections, to fill the post of City Manager. The situation is similar to that occurring in the selection of the President of the United States.

A further indication must be made with reference to the original draft of Section 21. It provided for a Mayor to be elected quadrennially. But Section 50, also of the original bill, provided for popular election of the Board of Commissioners, beginning in 1936, while Section 9 provided for an appointive Board of Commissioners to hold their offices until the first Monday of January, 1937, that is, for a period of five years and four months.[105] Therefore, if Section 21 as originally drafted had been left unamended, it would not have been possible to choose or have a City Manager during one year and four months immediately after the act went into effect.[106] A hiatus

[105] Act No. 99 went into effect on August 15, 1931, i.e., three months after its approval (Section 52).

[106] Because the 1932 general elections would not be held until the first Tuesday after the first Monday in November. See sec. 29, Organic Law of Puerto Rico, Act March 2, 1917; 39 Stat. 951.

would have resulted in the new government set-up. Hence, to obviate this grave difficulty, Section 21 was approved in the form it now stands, that is, in harmony with Section 9, providing for a City Manager to be appointed by the Board "created by this Act." Therefore, it was generally understood at the time, and subsequently thereafter, that the first City Manager, as also the first Board of Commissioners, under the Act, were to hold office only until the first Monday of January, 1937, that is, until the date when the Board members to be elected in 1936[107] should enter into possession of their offices, which date coincides with the statutory expiration date of the term of office of the last appointive Board member.

The lawmakers, therefore, in amending the original draft of Section 21 did not have in mind the idea of tenure of the City Manager, but only the wish to avoid such hiatus and to install a provisional appointive administration for the City of San Juan to last until the general elections of 1936.

Petitioner's reference to two opinions of the Attorney General of Puerto Rico, rendered on December 8, 1936 and January 30, 1937,[108] does not support his contention in any substantial manner. Said opinions cover points of law different from the one here involved. The first one refers to the inquiry as to whether the Board of Commissioners, holding office in 1936, could appoint a new City Manager to take office prior to the expiration of the leave which that Board had granted to Mr. Benítez Castaño. Section 25 of the Act was construed by the Attorney General of Puerto Rico in the sense of not allowing such appointment until the expiration of the leave. Section 21 of the Act was not even mentioned in the opinion.

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[107] As provided by Section 50 of the Act.

[108] Brief for Petitioner, Appendix C, page 50, and Appendix D, page 52.

The second opinion of the Attorney General of Puerto Rico, referred to by Petitioner, covers only the questions (1) as to the term of the officers and employees of the Capital which were appointed on September 11, 1931, and (2) if the new administration elected in 1932 was a continuation of the former administration. Although in this second opinion, reference is made to Section 21 of the Act, such reference is mere dicta and has no value at all.

Finally, a brief examination of the context of the statute will be helpful in the determination of the correctness of the Puerto Rican Supreme Court's construction of the Act as providing for a limited tenure, instead of a tenure for life, for the office of City Manager of San Juan.

Section 21 provides that the City Manager is the chief executive of San Juan. He is appointed and may be removed for cause by the Board of Commissioners created by the Act. He may be suspended by the Board and the payment of his salary stopped, when charges are filed against him (Section 23). The City Manager appoints, and may remove for cause, five of the six officials of the City Government (Section 26). The other one, the Auditor of the Capital, is appointed and may be removed for cause by the Board (Section 36).

The City Manager has the direction and superintendence of all the officials of the City, including the Auditor (Section 29). The City Manager represents the Capital in all judicial actions, but he cannot acquiesce in the complaint or fail to answer the same, or submit such action or proceeding to arbitration without the previous written consent of the Board of Commissioners (Section 30). The City Manager has charge of the direction of such offices and employees as the Board may assign to him (Section 31). The Treasurer, the Director of Public Works, the

Director of Health and Charity, the School Director, the Auditor and the Secretary, even though appointed by the City Manager, except the Auditor, are subjected to orders and duties, in addition to those defined by law, to be defined by the Board of Commissioners (Sections 32, 33, 34, 35, 36 and 37).

The Board of Commissioners is invested with extraordinary powers, legislative and administrative in character (Section 18). It is the governmental body of the Capital (Section 9). It approves the annual budget of receipts and expenditures (Section 18 (1)). It creates such positions as may be strictly necessary for the Government of the Capital, and no sala is to be paid to any employee whose position is not previously created by ordinance or resolution of the Board which shall specify the powers and duties of such employee, and shall state the necessity of such position for the public service (Section 18 (5)).

It will thus be readily seen that the City Manager cannot fairly and adequately discharge the duties of his office unless cooperation exists between it and the Board of Commissioners, and vice versa. Should the Board and the City Manager belong to opposite political parties, or believe in different social theories or in different economic programs, a deadlock in the governmental machinery might easily ensue. The City Manager could not appoint any employee at all, since payment of the salaries of employees and creation of their employments require a resolution or ordinance of the Board. Conceivably, the Board might even fail to provide for the salary of the City Manager by failing to approve in the annual budget any appropriation therefor. Untold embarrassment would result. Certainly such chaos and disorder should not be identified as the legislative meaning and intention in establishing the Government of the Capital of Puerto Rico.

Point II. D.

The judgment of January 14, 1942 implies a permanent stay of execution. Whether it results in an amendment of the prior judgment is immaterial in the premises. Petitioner's term of office as City Manager having expired after the judgment of reinstatement was entered and during the pendency of appeal proceedings, it "would be contrary to the statute and to justice that, availing himself of the terms of the judgment, Petitioner should be reinstated in an office to which he has no right" (R. 39). The Puerto Rican Supreme Court had jurisdiction to so act. Indeed, the authority of courts to stay execution has been referred to as an inherent one.

Petitioner's argument under this assignment of error undoubtedly must take for granted the correctness of his construction of the statute as to the tenure of office of the City Manager of San Juan. It does not seem possible or logical that it could be otherwise, for assuming that the City Manager's term of office is limited to four years, no rational argument could be made to persuade any court that a man whose term of office has already expired should, notwithstanding, be inducted into that office.

Therefore, this assignment of error is really superfluous. The determination of the other points raised by Petitioner will make it unnecessary to pass upon this last contention.

Nevertheless, it is only appropriate that Respondent should clear certain suppositions made by Petitioner throughout his argument.

There is no basis on the Record to warrant or justify the assertion that the Puerto Rican Supreme Court, in dealing with Respondent's motion for stay of execution, regarded it as involving a question of mixed law and fact.

Said motion for stay raised a point of statutory construction no different from any other problem of interpretation of laws. It is almost superfluous to repeat at this point the rule that, for purposes of ascertainment of legislative intent, as expressed in a statute, no factual questions are considered, no evidence is offered or admitted, in the usual, well-understood meaning of the term.

Petitioner calls attention to the discrepancy of one month between the theory of the Board and that of the Court as to the date of expiration of the four-year term of office of the City Manager, and says that such discrepancy is not satisfactorily reconciled anywhere in the Record. It really appears quite clearly explained therein. Under Section 50 of the Act, as originally approved [109], the term of office of the first Board of Commissioners expired on "the first Monday in January of 1937". But Section 50 was amended on March 24, 1937 [110], *after the appointment of Petitioner*, to provide that the Board of Commissioners elected in 1936, with its increased membership, should "continue in office until the end of the term for which they were elected * * *" [111] and to provide that successive Boards of Commissioners "shall take office on the second Monday in February following each general election." Hence, the Board elected in 1936 (the one which appointed Petitioner City Manager), had by express mandate of the statute a term of office which would expire on the second Monday in February following the general elections of 1940, i.e., on February, 1941. And since City Managers are appointed by the Board of Commissioners in their inaugural sessions, necessarily Petitioner's term of office would last until the second Monday of February, 1941, that is, the day when the new Board to be elected in

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[109] Brief for Petitioner, Appendix A, page 46.
[110] Brief for Petitioner, Appendix A, page 46.
[111] Ib.

1940 should enter into office and appoint a new City Manager [112].

Granted, for the purpose of argument of this assignment of error, that the term of the City Manager is limited to four years, "it would be contrary to the statute and to justice that, availing himself of the terms of the judgment, Petitioner should be reinstated in an office to which he has no right" (R. 39).

As a matter of law, the judgment of reinstatement became inoperative upon the expiration of the term of office.

Gordon v. *State*, 47 Tex. 208.

Under the circumstances, the authority of courts to stay execution forever has been referred to as an inherent one.

American Surety Co. v. *Fishback*, 163 P. 488.
Lineham v. *McNeill*, 31 Dom. L. R. 768.

The question presented by this assignment of error has been clearly decided against Petitioner by this Court. See *Boynton* v. *Ball*, 121 U. S. 457, 30 L. ed. 985, 7 Sup. Ct. 981.

Whether under the provisions of Section 7, subdivision 8, of the Code of Civil Procedure of Puerto Rico, or under inherent authority, or in furtherance of justice and right and to prevent injustice and delay,[113] the Puerto Rican Court was plainly justified in refusing to order reinstatement of Petitioner into the office of City Manager, his term of office having already expired in February, 1941.

Conclusion.

The opinion and judgment of the Supreme Court of Puerto Rico, affirmed by the Circuit Court of Appeals for

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[112] See also the pertinent paragraphs in the opinion of the Puerto Rican Supreme Court, R. 44.

[113] Act March 12, 1903, Section 1, Laws of Puerto Rico, 1903, page 59.

the First Circuit, is correct, represents the only true and fair interpretation of the Puerto Rican Legislature's intention as reflected in Act No. 99 of 1931, and, consequently, should not be disturbed by this Court.

Respectfully submitted,

F. FERNANDEZ CUYAR,
Attorney for Respondent.

H. GONZALEZ BLANES,
Of Counsel.

APPENDIX A.

Pertinent Sections of Act No. 99 of the Puerto Rican Legislature.

Approved May 15, 1931.

(Laws of Puerto Rico, 1931, pp. 626-656.)

Section 18.—Subject to other provisions of this Act, the Board of Commissioners shall have, among its other legislative and administrative powers, the following special powers:

(1) To approve the annual budget of receipts and expenditures;

(2) To sell, exchange, encumber, or lease real and personal property belonging to the Capital; Provided, That ordinances selling, exchanging, encumbering, or renting waterworks, electric plants, or any other establishment or plant for the exploitation of a public service for the Capital, shall be ratified and approved by the Legislature;

(3) To authorize loans, subject to the approval of the Executive Council of Porto Rico;

(4) To levy reasonable taxes and excises within the jurisdictional limits of the Capital; Provided, That for the purpose of applying the industrial and commercial license tax act approved by the Legislature of Porto Rico on March 28, 1914, the Board of Commissioners is hereby authorized to include, by means of an ordinance or resolution, any industrial or commercial establishment or agency not enumerated in said act;

(5) To create such positions as may be strictly necessary for the government of the Capital, and to provide the corresponding salaries in the budget; Provided, That the Board of Commissioners may not create any department or office in addition to those herein prescribed; Provided, further, that no salary shall be paid to any employee whose position is not previously created by ordinance or resolution of the Board of Commissioners, specifying the powers and duties

of such employee, and stating the need of the position for the public service;

(6) To create any independent board or commission to administer the waterworks or any other public service of the capital.

Section 29.—The City Manager shall have the direction and superintendence of all the officers of the Capital. He shall see to the good government of the city, and shall take such steps as are not in conflict herewith to require due exercise of the powers and due performance of the duties hereby imposed on the other officers of the Capital, in such manner as he reasonably believes most convenient to the best public service.

Section 30.—The City Manager, in his corporate and official capacity, shall represent the Capital in all official, judicial or extrajudicial actions brought by or against the Capital, and in such capacity he may appear and maintain all kinds of rights, actions and proceedings before any court of justice, organism or officer. In no proceeding or action where the Capital, represented by the City Manager, is a party, may the City Manager acquiesce in the complaint or fail to answer the same, or submit such action or proceeding to arbitration, without the previous consent of the Board of Commissioners.

Section 31.—The City Manager shall receive an annual salary of six thousand (6,000) dollars. He shall inspect and superintend all the public services of the Capital; issue reasonable rules to which municipal employees shall be subject in the performance of their duties and obligations, and, in addition, shall have immediate charge of the direction of such offices and employees as the Board of Commissioners may assign to him.

Section 32.—The treasurer shall have charge of the collection and custody of the public funds of the Capital, and shall make payments for public services and obligations according to such regulations, not incompatible herewith, as may govern on the subject. He shall also perform such other duties as are imposed on him by this Act and by other

laws in force, and by the resolutions and ordinances of the Capital.

The treasurer shall be a person competent in matters of public finance, and shall receive a salary of four thousand five hundred (4,500) dollars a year.

Section 33.—The Director of Public Works shall direct and manage all the public works of the Capital. He shall have charge of all municipal buildings, properties and lands, and shall fulfill all the requirements and perform all the duties and obligations imposed on him by this Act, by other laws in force, and by the ordinances and resolutions of the Capital.

The Director of Public Works shall be a duly authorized engineer or architect, and shall receive an annual salary of four thousand five hundred (4,500) dollars.

Section 34.—The Director of Health and Charities shall have charge of all administrative matters and services connected with public charities, health and cleaning.

He shall be in charge of the administration of all the hospitals, asylums and first-aid dispensaries, and of the public-health and cleaning services. He shall fulfill all the requirements and perform all the duties imposed on him by this Act, by other laws in force, and by the ordinances and resolutions of the Capital.

The Director of Health and Charities shall be a duly authorized physician-surgeon, and shall receive an annual salary of four thousand five hundred (4,500) dollars.

Section 35.—The School Director shall exercise all the functions and powers, and shall perform, in the Capital, all the duties of the former school boards. He shall be, or shall have been, a principal teacher or an inspector of public education, or a person holding a professional degree.

He shall have charge of all matters relative to public education in the Capital, and shall fulfill all the requirements and perform all the duties and obligations imposed on him by this Act, by other laws in force, and by the ordinances and resolutions of the Capital. He shall receive an annual salary of four thousand five hundred (4,500) dollars.

Section 36.—The Auditor of the Capital shall be appointed by the Board of Commissioners. This official may be removed by the Board of Commissioners for just cause, after a hearing and an opportunity to defend himself either personally or by attorneys. Causes for removal of this official shall be any act performed by him which constitutes a felony; any act performed by him which constitutes a misdemeanor and implies moral turpitude; carelessness or inexcusable negligence, or immoral and incorrect conduct, in the discharge of his office.

The Auditor of the Capital shall have all the powers, functions and duties, as regards the Capital, as are vested in the Auditor of Porto Rico as regards the Insular Government of Porto Rico, subject to the provisions of the Organic Act and to such regulations, not incompatible with this Act, as the Auditor of Porto Rico may prescribe. He shall sign all warrants and orders for the payment of money from the public funds of San Juan, and shall have custody of all the real and personal property of the Capital. It shall be his duty to demand responsibility from all officers or employees of San Juan under whose immediate custody any of the Capital's property may be, and he shall immediately report to the Auditor of Porto Rico and to the Board of Commissioners any damage suffered by any city property.

The Auditor shall issue all payment warrants against funds of the Capital, and together with the Treasurer, shall sign all the checks, drafts, credit certificates and disbursements of the Capital. He shall keep the Capital's accounts with full details of all receipts and expenditures.

The Auditor may prepare, for compliance by the officers and employees of the Capital, regulations on the custody of municipal property, provided such regulations are not incompatible with the provisions of the Organic Act, of this Act, of other laws in force, or of the ordinances and resolutions of the Board of Commissioners, and he may require an adequate bond from all employees whose functions are connected with the collection of public funds. He shall render annually to the Board of Commissioners a detailed and complete report of all municipal property.

The Auditor of the Capital shall be a person competent in public accounting, and shall receive an annual salary of four thousand five hundred (4,500) dollars.

Section 37.—The secretary shall have all the powers, functions and duties in connection with the Capital as are vested in the Executive Secretary of Porto Rico in connection with the Insular Government, subject to the provisions of the Organic Act and other laws of Porto Rico. He shall be the secretary of the Board of Commissioners and of the Administration Board. He shall have charge of the general archives of the Capital; shall keep the minutes of the Board of Commissioners, and shall certify the ordinances and resolutions adopted by said Board; and shall perform all the duties and obligations imposed on him by this Act, by other laws in force, and by the ordinances and resolutions of the Capital. He shall have charge of the civil registry of the Capital.

The secretary shall be a person of experience in the functions of a municipal secretary, and shall receive an annual salary of four thousand five hundred (4,500) dollars.

Section 52.—This Act shall take effect ninety days after its approval.

Approved, May 15, 1931.

APPENDIX B.

IN THE SUPREME COURT OF PUERTO RICO.

No. 8070.

CARLOS M. DE CASTRO, *Petitioner and Appellant,*

v.

BOARD OF COMMISSIONERS OF SAN JUAN,
Respondent and Appellee.

Appeal from the District Court of San Juan, P. R.

On Appeal to the U. S. Circuit Court of Appeals for the First Circuit.

I, Joaquín López, Secretary-Reporter of the Supreme Court of Puerto Rico, do hereby certify:

That in the record of the above entitled-case the following document appears, which, translated into English, reads thus:

"GOVERNMENT OF THE CAPITAL
"San Juan, Puerto Rico

"Board of Commissioners.

"I, Lino Padrón Rivera, Secretary of the Capital and of the Board of Commissioners, hereby certify:

"That in the Minutes of the inaugural session held by the Board of Commissioners of San Juan on February 10, 1941, there appear, among others, the following particulars:

"'Commissioner Mr. Maisonett presents a proposed Resolution by its title which reads as follows: "TO APPOINT HONORABLE FERNANDO J. GEIGEL CITY MANAGER OF THE CAPITAL; AND FOR OTHER PURPOSES".

"'Commissioner Mr. Díaz Collazo speaks in opposition to the proposed Resolution because of his understanding that Honorable Fernando J. Géigel is

now Mayor of San Juan and the mayor of all the citizens of the Capital of Puerto Rico, representing every political faction in such capacity, and he asks that, there being no other candidate, the appointment of Mr. Fernando J. Géigel be voted viva-voce.

"'The President intervenes stating to Commissioner Mr. Díaz Collazo that the only way through which the last part of his motion might be expedited is by having the consent of the author of the Resolution to withdraw the same, and Commissioner Mr. Maisonett having consented thereto and having withdrawn his proposed Resolution, the motion of Commissioner Mr. Díaz Collazo stands, and Commissioner Mr. Maisonett having seconded said motion, viva-voce, the Honorable Fernando J. Géigel is then appointed City Manager of the Capital. All the Commissioners stand up as a demonstration of recognition and public enthusiasm.

"'The President appoints Commissioners Messrs. Domínguez, Maisonett and Díaz Collazo to accompany the City Manager to the session room and said Committee withdraws for that purpose, returning within a short time afterwards accompanying the Honorable Fernando J. Géigel amidst the applauses of the Commissioners and of the public.

"'The President makes known to Mr. Géigel that the Board of Commissioners has just appointed him viva-voce City Manager of the Capital, making him its only candidate, and the Secretary of the Capital proceeds forthwith to administer the following oath of office:

"'"I, Fernando J. Géigel, of San Juan, Puerto Rico, appointed City Manager of the Capital by the Board of Commissioners of San Juan in its inaugural session held on February 10, 1941, do solemnly swear that I will maintain and defend the Constitution of the United States and the laws of Puerto Rico against all enemies, external and internal; that I will pledge fidelity and adherence to said laws; that I assume that obligation freely, without mental reservation or intent

of evading it; and that I will discharge well and faithfully the duties of the employment or office which I am about to exercise. So help me God.

"(Sgd.) FERNANDO J. GÉIGEL,

[THE SEAL OF THE CAPITAL]

Aff. No. 944

Sworn to and subscribed before me by Mr. Fernando J. Géigel, to me personally known, this 10th day of February, 1941.

LUIS A. CASTRO, *Secretary.*"

"'With the President's permission, the Honorable City Manager of the Capital proceeds to read a speech emphasizing the work done by the Administration since he assumed the duties of the Office of Chief Executive, and the work which — intends to perform during the period of time comprised between 1941 and 1945.'

"In witness whereof, I issue the present certificate under my signature and the official seal of the Capital in San Juan, Puerto Rico, this 28th day of November, 1941.

"(Sigd.) LINO PADRÓN RIVERA,
Secretary of the Capital."

I hereby further certify that the original of the above-transcribed document was filed in this Court by the Board of Commissioners of San Juan on December 6, 1941, annexed to its memorandum or brief in support of its motion for stay of execution.

And at the request of F. Fernández-Cuyar, Esq., I issue these presents, in San Juan, Puerto Rico, this 10th day of April, 1944.

JOAQUIN LOPEZ,
Secretary-Reporter of the Supreme Court of Puerto Rico.

[SEAL, SUPREME COURTS OF PUERTO RICO.]